



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Introduce an Ordinance Adding Chapter 9.30 to the Lodi Municipal Code Prohibiting the Establishment and Operation of Medical Marijuana Dispensaries in the City of Lodi.

MEETING DATE: February 16, 2011

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Introduce an ordinance adding Chapter 9.30 to the Lodi Municipal Code prohibiting the establishment and operation of medical marijuana dispensaries in the City of Lodi.

BACKGROUND INFORMATION: The City has a moratorium on the establishment or operation of medical marijuana dispensaries within the City. The moratorium expires on April 13, 2011.

At a Shirtsleeve meeting on December 21, 2010, the City Attorney's office presented an extensive presentation of the history of medical marijuana legislation and the current state of the law governing the growing, distribution and use of medical marijuana in California.

The original intent of the Compassionate Use Act of 1996 (Proposition 215) was to allow individuals to grow marijuana individually and collectively for medical purposes and ensure a defense to criminal charges for possession. In 2003, Senate Bill 420, known as "The Medical Marijuana Program Act," allowed for properly organized and operated collectives and cooperatives to distribute medical marijuana through storefront operations, commonly referred to as dispensaries. By permitting the distribution of medical marijuana through storefront dispensaries, the burden has been placed on each jurisdiction within the state to ensure that these facilities meet and comply with state law.

At the December 21, 2010 meeting, options were presented for Council discussion and consideration regarding the regulation of medical marijuana dispensaries. Issues discussed included a registration process and requirements for dispensaries, operating requirements, taxing/fees, and land-use considerations, including secondary effects medical marijuana dispensaries present for the community. Public comment was also received.

Council expressed concerns regarding the secondary effects medical marijuana dispensaries could have in the community along with the difficulties of ensuring that the marijuana dispensed through storefront dispensaries comes from legitimate sources, is distributed to qualified patients or caregivers, and is a not-for-profit business.

Based on the direction received from Council, the City Attorney's office has drafted an ordinance prohibiting the establishment and operation of medical marijuana dispensaries,

APPROVED:

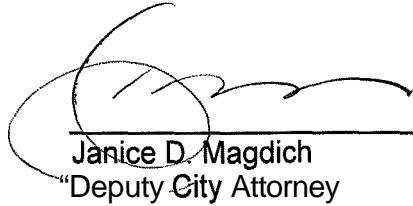

Konradt Bartlam, City Manager

including collectives and cooperatives, within the City of Lodi. The proposed ordinance will not impact the cultivation and use of medical marijuana by individuals in conformance with state law.

Under the proposed ordinance, a violation of the prohibition on the establishment or operation of a medical marijuana dispensary is declared a public nuisance and may be summarily abated by the City pursuant to a civil action brought under state law or by initiating administrative proceedings pursuant to Chapter 1.10 of the Lodi Municipal Code.

FISCAL IMPACT: None.

FUNDING: None.



Janice D. Magdich
Deputy City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF LODI AMENDING LODI MUNICIPAL CODE TITLE 9 –
PUBLIC PEACE, MORALS AND WELFARE BY ADDING
CHAPTER 9.30 “MEDICAL MARIJUANA DISPENSARIES”

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 9 – Public Peace, Morals and Welfare – is hereby amended by adding Chapter 9.30, “Medical Marijuana Dispensaries,” to read as follows:

CHAPTER 9.30

MEDICAL MARIJUANA DISPENSARIES

SECTIONS:

- 9.30.010 Definitions
- 9.30.020 Establishment and Operation of Medical Marijuana Dispensaries Prohibited.
- 9.30.030 Public Nuisance
- 9.30.040 Civil Penalties

Section 9.30.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. “Medical Marijuana” is marijuana authorized in strict compliance with Health and Safety Code Section 11362.5, et seq.

B. “Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is cultivated or by any means made available to, distributed by, or distributed to two (2) or more of the following: a qualified patient, a person with an identification card, or a primary caregiver in strict accordance with Health and Safety Code Sections 11362.5, et seq., and 11362.7, et seq.

A medical marijuana dispensary shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
 5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.
- C. "Person with an identification card" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.
- D. "Primary caregiver" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.
- E. "Qualified patient" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.

Section 9.30.020 Establishment and Operation of Medical Marijuana Dispensaries Prohibited.

No person shall establish, operate or permit the establishment or operation of a medical marijuana dispensary in or upon any premises in the City of Lodi.

Section 9.30.030 Public Nuisance

Any use or condition caused, or permitted to exist, in violation of any provision of this chapter 9.30 shall be; and hereby is declared to be a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731.

Section 9.30.040 Civil Penalties

In addition to any other enforcement permitted by this Chapter 9.30, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.10 of this code against any person or entity that violates this Chapter 9.30. In any civil action brought pursuant to this Chapter 9.30, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

SECTION 2. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect 30 days from and after its passage and approval.

Approved this ____ day of ____, 2011.

BOB JOHNSON
Mayor

Attest:

RANDI JOHL, City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held February 16, 2011, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2011, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:
D. STEPHEN SCHWABAUER
City Attorney, City of Lodi

By _____
JANICE D. MAGDICH
Deputy City Attorney